



Terms and Conditions for TÜV SÜD Academy Subcontractors

Hereinafter the sub contractual partner of TÜV SÜD Academy (as defined below) shall be referred to as **"Subcontractor"**, and TUV SUD Limited (Company number: SC215164) and having its registered office at Scottish Enterprise Technology Park, Napier Building, Glasgow, G75 0AF shall be referred to as **"Academy"**. The Subcontractor and the Academy shall be jointly referred to as **"Parties"**.

1.0 GENERAL DESCRIPTION, SCOPE OF APPLICATION

- 1.1 These Terms & Conditions shall apply in respect of carrying out events, such as public and in-house courses, seminars, and workshops (hereinafter referred to as **"Services"**) between the Subcontractor and the Academy.
- 1.2 This contract is made up of these Terms & Conditions and Trainer Subcontract Form (the **"Agreement"**).
- 1.3 If there is any conflict or ambiguity between the Terms & Conditions and the Trainer Subcontract Form, the Trainer Subcontract Form shall take precedence.
- 1.4 The Terms and Conditions shall apply exclusively. Any Terms and Conditions of the Subcontractor, which run contrary to these Terms and Conditions, or which amend them, shall only become a part of this Agreement, where the Academy has explicitly consented to this in writing. This consent requirement shall apply in all cases, including in situations where the Academy is aware of the Subcontractor's Terms and Conditions and provides Services for the Subcontractor without reservation.
- 1.5 Any individual agreements entered into with the Subcontractor (including any ancillary agreements, amendments or changes) shall have precedence over these Terms and Conditions. The content of any such agreements shall be proven by way of a written contract, or, as the case may be the written confirmation of the Academy, subject to proof to the contrary.

2.0 SERVICES

- 2.1 The Services must be outlined in the Trainer Subcontract Form including but not limited to dates, duration, rate and agreed travel expenses.
- 2.2 In supplying the Services, the Subcontractor undertakes to:
 - 2.2.1 provide the Services with the highest level of care, skill and diligence in accordance with best practice in the Subcontractor's industry, profession or trade;
 - 2.2.2 co-operate with the Academy in all matters relating to the Services, and comply with all instructions of the Academy; and
 - 2.2.3 comply with all applicable laws, statutes, regulations and codes from time to time in force.
- 2.3 The Subcontractor shall, as and when requested to do so by the Academy, provide information to the Academy (in writing if so required) about any aspect of the provision of the Services.
- 2.4 The Academy is not obliged to supervise the Subcontractor.

3.0 PAYMENT

- 3.1 The rate for the Services stated in the Trainer Subcontract Form is fixed for the duration of this Agreement as agreed by the Academy in the Trainer Subcontract Form. The rate is inclusive of all design work and fees and specification, the supply of all materials, labour, equipment and everything else that is needed for the full and proper performance and carrying out of the Services.
- 3.2 For the avoidance of doubt, all preparation time associated with the provision of the Services by the Subcontractor is included in the rate for Services stated in the Trainer Subcontract Form.
- 3.3 Travel time and any applicable expenses must be stated in the Trainer Subcontract Form and agreed to by the Academy.
- 3.4 The Academy shall in addition to the rate pay to the Subcontractor such Value Added Tax as may be properly chargeable on payments due under the subcontract.
- 3.5 The Subcontractor is required to provide an invoice via email to: tuv-sud@restoredigital.co.uk within 2 weeks of completion of the Services. Invoice to include any agreed expenses. The Subcontractor must not raise an invoice for expenses from extended stays beyond actual training days and associated travel days unless authorised in advance by the Academy.



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- 3.6 The Academy shall pay the Subcontractor all fees properly due and invoiced in accordance with this Agreement within 30 days of receipt of any such invoice.
- 3.7 Without prejudice to its other rights and remedies, the Academy reserves the right to make no payment, or to make part payment, in respect of any Services of a standard below that which the Academy may reasonably expect.

4.0 OTHER ACTIVITIES OF THE SUBCONTRACTOR

- 4.1 It is understood that the Subcontractor may be engaged in any other working relationships or provide services to a third party. The Subcontractor is under no obligation to notify the Academy of or obtain any approval or consent from the Academy in respect of such arrangements.

5.0 LICENCES AND QUALIFICATIONS

- 5.1 The Subcontractor is responsible for obtaining or procuring, at its own cost such licences and qualifications in relation to the Services as are required from time to time. The Subcontractor shall make those licences and qualifications available to the Academy if requested.
- 5.2 In the event that the Academy requests, the Subcontractor is obligated to attend the Academy's "Train the Trainer" programme at no cost to the Academy.

6.0 INSURANCE

- 6.1 During the term of this Agreement the Subcontractor agrees to have in place all insurances with such level of cover as would be appropriate for a responsible business or individual carrying out the Services and the Subcontractor must provide the Academy on request with written confirmation from its insurers or brokers of the insurances and level of cover it has, including public & product liability, employers liability, professional indemnity insurance and contractors all risks insurance together with details of the renewal date and confirmation that premiums have been paid up to date.

7.0 CODE OF CONDUCT

- 7.1 In a manner appropriate to the size, nature and scope of its own business activities, the Subcontractor undertakes to comply with the expectations contained in the TÜV SÜD Supplier Code of Conduct in its own business area and to address them appropriately in its own supply chain. The Supplier Code of Conduct can be accessed, printed and downloaded at <https://www.tuvsud.com/en/tuev-sued-sourcing>.
- 7.2 The Academy reserves the right to change the TÜV SÜD Supplier Code of Conduct with a notification period of 6 weeks.
- 7.3 The Subcontractor undertakes to inform its own employees about the contents of the TÜV SÜD Supplier Code of Conduct and to train them regularly. The Academy shall provide training material, if required.
- 7.4 The Subcontractor undertakes to implement appropriate control measures to verify compliance with the expectations contained in the TÜV SÜD Supplier Code of Conduct, both in its own business area and to a risk-appropriate extent in its own supply chain. The Subcontractor undertakes to participate in risk-based supplier self-assessment surveys conducted by the Academy to demonstrate compliance with the expectations contained in the TÜV SÜD Supplier Code of Conduct. The Academy is entitled to audit the Subcontractor at the Academy's expense to assess compliance with the expectations contained in the TÜV SÜD Supplier Code of Conduct. The audits can be carried out by the Academy, or a third party commissioned by the Academy after prior notification in good time. The Subcontractor undertakes to support the Academy in carrying out such audits; the Academy undertakes to give due consideration to the legitimate interests of the Subcontractor.



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- 7.5 If the Academy has justified doubts about the Subcontractor's compliance with the expectations contained in the TÜV SÜD Supplier Code of Conduct or if a breach of an expectation is imminent or has already occurred, the Subcontractor and the Academy shall jointly agree on appropriate remedial measures. If no agreement is reached on specific measures, the Academy will propose specific measures and, when deciding on further cooperation, will use the implementation of these measures as the decisive criterion.

8.0 INTELLECTUAL PROPERTY RIGHTS

- 8.1 The copyright in any and all materials, results, calculations, etc. produced by the Academy shall be explicitly reserved to the Academy. Any reproduction, publication, passing onto third parties, or other use by the Subcontractor shall only be permissible with the prior, written consent of the Academy.
- 8.2 Where materials from third parties are used as part of performing the Services, then the copyright in any such materials shall remain with those third parties.
- 8.3 In cases as per sections 8.1 and 8.2 neither the Subcontractor nor third parties may amend the materials, even in excerpts, either as far as the content is concerned, or to make any editorial changes, or indeed use any amended versions, reproduce the materials, make them publicly available, or forward them, upload them to the internet or other networks, whether for a fee or free of charge, imitate them, sell them, or use them for any other purposes than contractually agreed. Copyright notices, identifying markings, or trademarks must not be removed.
- 8.4 The Subcontractor shall reimburse the Academy with an amount equal to any cost, expense or legal fees incurred at the Academy's written request or authorisation and shall indemnify the Academy against the liability accessed against the Academy on account of an Intellectual Property infringement.

9.0 CONFIDENTIALITY

- 9.1 Each party undertakes to the other to keep confidential all information concerning the business, affairs, customers, clients or suppliers of the other which it has obtained or received as a result of discussion leading up to entry into this Agreement, or which it has obtained during the course of this Agreement, except information that is subject to disclose under law, or already in the public domain.
- 9.2 Each party undertakes to the other to take all steps that are necessary from time to time to ensure compliance with the provisions of this clause by its employees, agents and third-party contractors.
- 9.3 Each party shall not disclose or utilise any business or trade secrets of which it becomes aware in the course of performing the Services, beyond using it in order to perform that Services, unless authorised to do so.

10.0 DATA PROTECTION

- 10.1 Each party undertakes to the other to comply with Data Protection Laws on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as applicable from time to time.

11.0 LIMITATION OF LIABILITIES

- 11.1 The Academy shall not be liable to the Subcontractor for any loss of revenue, profit, goodwill or business opportunity or for any consequential loss attributed to or associated with the performance or non-performance of the Services.



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- 11.2 The total liability of the Academy to the Subcontractor arising out of or associated with the performance or non-performance of the Services, whether arising in contract, delict (including negligence) or breach of statutory duty, shall not exceed the contract price.

12.0 FORCE MAJEURE

- 12.1 In the event that either party is unable to perform its obligations to the other party in whole or in part or not in a timely manner due to an unusual and unforeseeable event beyond the control of that party (force majeure event), the affected obligations of the party relying on the force majeure event shall be suspended for as long as the force majeure event and its consequences persists; any obligations of the other party to provide consideration during this time shall lapse. Claims of the other party, in particular claims for damages, shall not arise in this respect. The party invoking force majeure shall, however, be obliged to inform the other party without delay in written form of the event, the suspended performance obligations and the expected duration of the suspension of the performance obligations. The same shall apply if, by observing a reasonable duty of care, the party invoking force majeure recognises, whilst the performance obligations are suspended, that the notified probable duration of the suspension will change significantly. If the force majeure event lasts longer than four weeks from the first intimation to the other party, both parties shall be entitled to withdraw from the contract. The right of withdrawal shall be replaced by a right of termination for continued obligations. The suspension of a payment obligation - except in scenarios prescribed by law or if such payment obligation represents a consideration within the meaning of sentence 1 of this section - cannot be based on force majeure.

13.0 INDEMNITY

- 13.1 The Subcontractor shall indemnify the Academy against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Academy arising out of or in connection with the breach or negligent performance or non-performance of this Agreement. This section does not apply when a force majeure event has occurred.

14.0 RELATIONSHIP BETWEEN PARTIES

- 14.1 Nothing in this Agreement shall render the Subcontractor an employee, agent or partner of the Academy, and the Subcontractor shall not hold itself out as such.
- 14.2 The Subcontractor will be solely liable for the payment of any tax or social security contributions payable on any fees or expenses paid to it by the Academy arising in consequence of this Agreement.

15.0 SUBCONTRACTOR EMPLOYEES

- 15.1 The Subcontractor shall supply employees of sufficient quality to carry out and complete the Services. The Subcontractor shall at the Academy's request cease to employ any one or more of its employees in delivery of Services to whom the Academy may object and shall replace such employee or employees immediately with others to whom there is no objection before continuing the Services.
- 15.2 The Subcontractor will be responsible for the payment of Income Tax, National Insurance and any other statutory deductions for all of its employees employed to carry out the Services. The Academy shall have no responsibility for the non-payment of any such sums.

16.0 ASSIGNMENT

- 16.1 The Subcontractor may not assign, transfer or charge its rights under this Agreement without the prior written consent of the Academy. Consent shall not be unreasonably withheld or a decision thereon unreasonably delayed. If the Academy consent to any assignment or subcontracting, the



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Subcontractor will remain responsible for all the acts and omissions of its subcontractor as if they were its own.

17.0 THIRD PARTY RIGHTS

- 17.1 Unless expressly stated to the contrary, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to any third party who is not a party to this Agreement to enforce any term of this Agreement.

18.0 NOTICES

- 18.1 Any notice or other written communication between the parties will be effective if sent by pre-paid post, emails as detailed in the Subcontractor Form, or delivered by hand to the address of the other party and will be deemed to have been received:
- (a) if sent by post 2 working days after posting;
 - (b) if delivered by hand on the date of delivery.

19.0 TERMINATION

- 19.1 Without affecting any other right or remedy available to it, the Academy may terminate this Agreement on giving not less than 5 working days notice to the Subcontractor.
- 19.2 Parties will have 14 days to remedy a breach of this Agreement. If un-remedied for 14 days, either party may terminate or suspend performance of Services immediately upon giving written notice to the other party without liability for compensation or damages.
- 19.3 The Academy will be required to pay the Subcontractor for the Services properly provided up to the date of termination, less any sums the Academy have to expand, including with other subcontractors, in order to have the Services properly and fully carried out and completed.
- 19.4 Termination or expiry of all or part of this Agreement however it arises, will not affect either of the parties' rights and remedies that have accrued at the date of termination or expiry, including the right to claim damages or any other remedy in respect of any breach of this Agreement that existed at or before the date of termination or expiry.

20.0 COMPLIANCE

- 20.1 The Subcontractor hereby confirms to the Academy that neither he himself nor any of its employees have committed any act in connection with this agreement that may constitute bribery, nor shall the Subcontractor or its employees commit such acts in the future. The Subcontractor hereby represents to the Academy that it shall refrain from all activities, which could constitute a criminal act of fraud, fraudulent breach of trust, money laundering, criminal offence under insolvency law, criminal offence under unfair competition law, granting of an undue advantage or bribery. To prevent the abovementioned violations, Subcontractor shall implement and maintain reasonable measures.
- 20.2 In the event that the Subcontractor or its employees have demonstrably entered into a culpable agreement in connection with the placement of an order, which represents an inadmissible restraint of competition, it shall be liable to pay to the Academy 10% of the respective net order value as liquidated damages. Both contract parties shall be entitled to prove that a higher or lesser amount of damage has been caused. This payment obligation shall also arise if the underlying contract has been ended by termination or withdrawal or has been fulfilled. Further contractual or statutory claims of the Academy shall remain unaffected.
- 20.3 The Subcontractor hereby represents and warrants to the Academy that all necessary permits and authorizations have been obtained prior to providing Deliveries to the Academy.



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- 20.4 In the event of any violation of the provisions in this clause 20 beyond an insignificant extent attributable to the Subcontractor's fault, the Academy shall be entitled to stop all negotiations with the Subcontractor, and to terminate the contractual agreement with the Academy or withdraw from this agreement, both without notice period.
- 20.5 In the event that the Academy is held liable by any third party based on a culpable violation of any undertaking in this clause 20 by Subcontractor, Subcontractor hereby agrees to indemnify the Academy from any such claims. In addition, Subcontractor hereby agrees to reimburse the Academy for all damages caused by such third-party claims (including indirect damages).

21.0 PLACE OF JURISDICTION, PLACE OF PERFORMANCE, APPLICABLE LAW

- 21.1 The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of Scotland.
- 21.2 Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.